

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC WELLINGTON,

Plaintiff,

AMENDED COMPLAINT

22-CV-6145-CJS

v.

JOHN DOE C.O. 1,
JOHN DOE C.O. 2',
JOHN DOE C.O. 3 (SGT),
JOHN DOE C.O. 4,
JOHN DOE C.O. 5,

Defendants.



IV.

D. On the morning of October 4, 2019, while sitting at the table in the mess hall John Doe C.O. 1 walked up beside me and placed a hand on my shoulder and ordered me to turn around and put my legs under the table. I complied, but replied, "...can't you see there's another person sitting in the chair too?", and "You didn't have to touch me."

Seconds later, John Doe C.O. 2 began to walk down the length of the table and when he got to me he stopped, leaned across the table and pointed his finger in my face yelling, "...Nigger you do what the fuck we tell you to do!" I replied, "Yes sir." John Doe C.O. 2 then started walking back down and around the table towards me. When he got to within feet of me John Doe C.O. 3 (SGT) stepped in between us and ordered that I be removed from the mess hall. As I was ordered to stand up so that John Doe C.O. 1 could place handcuffs on my wrist, John Doe C.O. 1 placed a hand up on my shoulder while pushing me forward which caused me to fall to the floor where I hit my head and immediately felt blood running down my face. I immediately felt John Doe C.O. 1 place his knee in my lower back, all the while I was surrounded by several C.O.s John Doe C.O. 4 and 5. I was kicked in my head and various other parts of my body.

After a few more minutes passed while I was being beaten, I was then picked up and dragged out of the mess hall and into a hallway where I was then slammed into a wall face first, and told not to turn around. Within minutes I was pushed in a courtyard located in the back of the commissary for Elmira Correctional Facility (ECF), at which time I was then ordered to face the fence. Here I was subjected to more physical assaults which lasted another few more minutes longer than the previous assaults. John Doe C.O. 3 (SGT) then re-appeared and ordered that I be taken to the facility clinic by John Doe C.O. 1 who continued to hit me and issue threats. When we finally arrived at the facility clinic I was told by John Doe C.O. 1 not to say a single word about what had taken place. I then entered the

clinic, was taken into a room where Nurse Jane Doe was located. She directed me to take a seat, at which time I informed her that I couldn't sit down because I was in a great deal of pain as a result of being beaten by COs. At that moment she began to clean up my injuries consisting of lacerations to my head and wiping the blood from my face. During this time a John Doe (SGT) entered the room and demanded that the Nurse stop cleaning up my wounds/injuries stating that pictures needed to be taken first.

Said John Doe (SGT) then ordered me to get undressed, as photographs began to be taken of the lacerations on the top of my head as well as the rest of my body. I am unsure of exactly how many pictures were taken, but I do recall numerous photos having been taken at this particular time. I also further recall that during the picture taking session, Nurse Jane Doe specifically informed John Doe (SGT) that I needed to go to an outside medical facility because my injuries were significant, that ECF medical couldn't properly treat me there. Nurse Jane Doe finished doing whatever she could under the circumstances to clean up my injuries and/or was allowed to do, and then I was taken by prison guards upstairs to another room in the ECF clinic where I waited for about 45 minutes.

Thereafter, John Doe C.O. came to the door window, knocked and ordered me to be ready in 5 minutes. By then I was laying on the floor in enormous pain and couldn't respond. After about a minute, said John Doe C.O. returned and simply said "lets go!" When he realized that I was unresponsive and exemplifying pain, he immediately called for a Nurse who looked at me and then demanded firmly that John Doe C.O. get a wheel chair, and that I be taken to an outside hospital.

At the hospital I was put in a room, where John Doe Doctor came and examined me. Said Doctor also informed me that as soon as the radiology room is available, someone would come and get me. After radiology, I was brought back to the first hospital room where said Doctor began inserting staples into my head and gave me medication to help deal with the enormous pain I was still experiencing. Thereafter, I was discharged from the hospital and brought back to the ECF.

Back at ECF, I was forced to painfully walk back to my assigned cell. I was there in my cell crying and suffering from excruciating pain for about 5 minutes when John Doe C.O. (SGT) and John Doe C.O. appeared and I was ordered to place my hands behind my back. I complied as best I could, and then I was taken to the ECF's Special Housing Unit also known as the Box.

In the SHU/Box, all of my clothes were taken and I was forced to wear pajama type extra thin clothing that did nothing to keep me warm. During this time in the SHU/Box I made numerous requests to speak with a nurse or someone from medical because I was still in a great deal of pain resulting from the beating/assault I experienced at the hands of the Defendants. All of my requests were denied, and I was told by John Doe C.O., who had a snicker upon his face to put in for sick-call again. Which I did; but still was made to suffer in pain for about another week following the beating/assault Defendants inflicted upon me.

I believe, within 48 hours I was then summoned to appear at a disciplinary Teir 3 hearing which was then adjourned. Later on, that same day, I was told to pack my belongings because I was leaving ECF. I was put into a ECF van and taken to the Southport Correctional Facility. Once there I immediately requested to see a nurse or doctor because I was still in pain from my back and head. I basically could not move my body and needed the assistance of a wheel chair. Still again, I was denied medical attention and simply told to put in for sick-call, which I did; but still was never seen. However, I did receive a note from Southport Correctional Facility's medical stating that I would be placed on a call-out to have the staples removed from my head soon.

John Doe C.O. 3 (SGT) was the area supervisor whose job entailed care, custody, and control; when John Doe C.O. 2 decided to lean across the mess hall table and point his finger in my face while yelling, "nigger you do what the fuck we tell you to do." That when John Doe C.O. 2 came around the table his intentions was to cause physical harm to my person. John Doe C.O. 3 (SGT) noticed and/or knew of John Doe C.O. 2's intentions to cause me physical harm because he had stepped in front of him (to hold him back and contain his rage and eagerness), until such time when I was removed from the mess hall and completely isolated from the general prison population, at such time when the whipping and/or beating of my person took place.

John Doe C.O. 3 (SGT) has worked with John Doe C.O. 2 for a number of years and did recognize his potential mean spirited characteristics. However, John Doe C.O. 3 (SGT) was liable simply because he failed to care for my well being while in his custody and, he had control over the situation but failed to assert his authority and control to prevent Plaintiff from being whipped by Defendants John Doe C.O.s his subordinates.

Those listed in the caption John Doe C.O.s 1,2, and John Doe C.O. 3 (SGT) are the ones (individuals) who caused the harm to my person. John Doe C.O.s 4 & 5 are the ones who surrounded me, among others who I cannot identify at this particular time. When one is being beaten by multiple men, it can be difficult to keep track of which of them lands which blows, which pushes you, which kicks you, etc. In that moment, I believed that I was going to die....I was just praying and willing myself to simply survive. Much of the whipping/attack happened behind my back, so I really could not see exactly which of the Defendants was responsible for which parts of the attack and which injuries.

With the aid of discovery, I could ascertain missing facts about who did what. For example, video could show who did what. Text messages or emails between the Defendants could reveal the role each person had. The Defendants could be questioned about their exact roles in depositions, under oath.

Regarding the "John Doe" Defendants, it is proper for a section 1983 Plaintiff to use a Doe pleading until such time as his or her identity can be learned through discovery or through the aid of the trial court. Plaintiff therefore respectfully request that the Court assist me in identifying the John Doe Defendants, as required by *Valentin v. Dinkins*, 121 F.3d 72, 75 (2d Cir.1997).

VI.

RELIEF REQUESTED: In addition to the Court's assistance in identifying the Defendants, Plaintiff also seeks an injunction requiring the NYS. Department Of Corrections to provide me with the necessary medical assistance for my clearly documented injuries, and FIVE MILLION (\$5,000,000.00) dollars in compensatory, punitive, and nominal damages.

Dated: Stormville, New York
November 29, 2022

Respectfully Submitted,

/s/ Eric Wellington
Eric Wellington
Plaintiff Pro Se

Green Haven Corr. Fac.
594 Route 216, P.O. Box 4000
Stormville, New York 12582

CERTIFICATION

I certify to the best of my knowledge, information, and belief that this amended complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

/s/ Eric Wellington
Eric Wellington
Plaintiff Pro Se